## SENATE BILL NO. 380

## INTRODUCED BY PINSONEAULT, B. BROWN

## BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

### IN THE SENATE

FEBRUARY 19, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 21, 1987	PRINTING REPORT.
FEBRUARY 23, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 24, 1987	ENGROSSING REPORT.
FEBRUARY 25, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.
IN	THE HOUSE
MARCH 3, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 95; NOES, 2.
	RETURNED TO SENATE WITH AMENDMENTS.

### IN THE SENATE

APRIL 3, 1987 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS

CONCURRED IN.

APRIL 4, 1987 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

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which it is sold.

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1	Aluste BILL NO. 380
2	INTRODUCED BY KIN DEN ENGLY BOX BOOM
3	BY REQUEST OF THE SENATE JUDICIARY COMMITTEE
4	
`5	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW
6	RELATING TO PRODUCTS LIABILITY ACTIONS; DEFINING TWO
7	DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE; AND
8	PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Strict liability of seller of product for
12	physical harm to user or consumer. (1) As used in this
13	section, "seller" means a manufacturer, wholesaler, or
14	retailer.
15	(2) A person who sells a product in a defective
16	condition unreasonably dangerous to a user or consumer or to
17	the property of a user or consumer is liable for physical
18	harm caused by the product to the ultimate user or consumer
19	or to his property if:
20	(a) the seller is engaged in the business of selling
21	such a product; and
22	(b) the product is expected to and does reach the user
23	or consumer without substantial change in the condition in

<b>A</b>	
Δ	a Legislative Council
<b>/L_( Montan:</b>	Legislative Council

- (a) the seller exercised all possible care in the preparation and sale of his product; and
- 3 (b) the user or consumer did not buy the product from
   4 or enter into any contractual relation with the seller.
- 5 (4) Except provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named 9 as a defendant in an action based on strict liability in 10 tort for damages to person or property caused by a 11 defectively designed or defectively manufactured product may 12 assert the following affirmative defenses against the user 13 or consumer, the legal representative of the user or 14 consumer, or any person claiming damages by reason of injury 15 16 to the user or consumer:
- 17 (a) The user or consumer of the product discovered or
  18 in the exercise of ordinary care should have discovered the
  19 defect and was aware or in the exercise of ordinary care
  20 should have been aware of the danger and unreasonably made
  21 use of the product and was injured by it.
- 22 (b) The product was misused by the user or consumer23 and such misuse caused or contributed to the injury.
- (5) The affirmative defenses referred to in subsection(4) mitigate or bar recovery and must be applied in

- accordance with the principles of comparative negligence set
- 2 forth in 27-1-702.

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# APPROVED BY COMMITTEE ON JUDICIARY

Denote BILL NO. 380 1 INTRODUCED BY ELIS SEN LAND BOL BOOM 2 BY REQUEST OF THE SENATE JUDICIARY COMMITTEE 3 4 "AN ACT CLARIFYING THE LAW A BILL FOR AN ACT ENTITLED: PRODUCTS LIABILITY ACTIONS; DEFINING TWO 6 RELATING DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE: 7 PROVIDING AN IMMEDIATE EFFECTIVE DATE." 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Strict liability of seller of product for 11 physical harm to user or consumer. (1) As used in this 12 section, "seller" means a manufacturer, wholesaler, or 13 retailer. 14 (2) A person who sells a product in a defective 15 condition unreasonably dangerous to a user or consumer or to 16 the property of a user or consumer is liable for physical 17 harm caused by the product to the ultimate user or consumer 18 or to his property if: 19 (a) the seller is engaged in the business of selling 20 such a product; and 21 (b) the product is expected to and does reach the user 22 or consumer without substantial change in the condition in 23 which it is sold. 24

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2	preparati	on an	d sale o	f his produ	ct: a	nd			

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- (b) the user or consumer did not buy the product from
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- 5 (4) Except provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named 10 as a defendant in an action based on strict liability in tort for damages to person or property caused by a 11 defectively designed or defectively manufactured product may 12 assert the following affirmative defenses against the user 13 or consumer, the legal representative of the user or 14 consumer, or any person claiming damages by reason of injury 15 to the user or consumer: 16
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  18 in the exercise of ordinary care should have discovered the
  19 defect and was aware or in the exercise of ordinary care
  20 should have been aware of the danger and unreasonably made
  21 use of the product and was injured by it.
- 22 (b) The product was <u>UNFORESEEABLY</u> misused by the user 23 or consumer and such misuse caused or contributed to the 24 injury.
- 25 (5) The affirmative defenses referred to in subsection

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- l (4) mitigate or bar recovery and must be applied in
- 2 accordance with the principles of comparative negligence set
- 3 forth in 27-1-702.

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2	INTRODUCED BY PINSONEAULT, B. BROWN
3	BY REQUEST OF THE SENATE JUDICIARY COMMITTEE
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5	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW
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16	condition unreasonably dangerous to a user or consumer or to
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21	such a product; and
22	(b) the product is expected to and does reach the use
23	or consumer without substantial change in the condition in
24	which it is sold.

- 5 (4) THE-REQUIREMENT-IN-SUBSECTION (2)(B) DOES NOT APPLY TO
  A CLAIM FOR RELIEF BASED UPON IMPROPER PRODUCT DESIGN.
  - (4)(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:
- 23 (a) The user or consumer of the product discovered or
  24 in-the exercise of ordinary-care-should-have-discovered the
  25 defect and-was--aware--or-in-the-exercise-of-ordinary-care

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- should-have-been-aware of the danger OR THE DEFECT WAS OPEN

  AND OBVIOUS and THE USER OR CONSUMER unreasonably made use

  of the product and was injured by it.
- 4 (b) The product was <u>UNFORESEEABLY</u> misused
  5 by the user or consumer and such misuse caused or
  6 contributed to the injury.
- 7 (5)(6) The affirmative defenses referred to in 8 subsection (4) (5) mitigate or bar recovery and must be 9 applied in accordance with the principles of comparative 10 negligence set forth in 27-1-702.

#### STANDING COMMITTEE REPORT

HOUSE MARCH 26, 1987 JUDICIARY Mr. Speaker: We, the committee on \_\_\_ report SENATE BILL NO. 380 ☐ do pass as amended **X** be concurred in ☐ do not pass ☐ statement of intent attached ☐ be not concurred in 1. Title, line 6. Strike: ";" Insert: "AND" 2. Title, lines 7 and 8. Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE" 3. Page 2, line 5. Following: line 4 Insert: "(4) The requirement in subsection (2)(b) that the product is expected to and does reach the user or consumer without substantial change in the condition in which the product is sold does not apply to an action based upon improper product design." Renumber: subsequent subsections 4. Page 2, lines 17 and 18. Strike: "or in the exercise of ordinary care should have discovered" 5. Page 2, lines 19 and 20. Strike: "and was aware or in the exercise of ordinary care should have been aware of the danger" Insert: "or the defect was open and obvious" 6. Page 2, line 20. Following: "and" Insert: "the user or consumer" 7. Page 2, line 22. Strike: "UNFORESEEABLY" Insert: "unreasonably" 8. Page 3, line 1. Strike: "(4)" Insert: "(5)"

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reading copy (BLUE) REP. ADDY WILL CARRY THE BILL!

# **COMMITTEE OF THE WHOLE AMENDMENT**

HOUSE

3-28-87 DATE 19:40

MR. CHAIRMAN: I MOVE TO AMENDSB	380	TIME
3rd reading copy ( blue Color	) as follows:	

AMENDING THE HOUSE JUDICIARY STANDING COMMITTEE REPORT DATED 3-26-87, WHICH AMENDED SB 380

1) Amending Instruction No. 3, line 3 (the inserted material).
Following: "(4)"

Strike: "The requirement in" through "design" (all of the

Insert: "Subsection 2 (b) does not apply to a claim for relief
based upon improper product design"

ADOPT REJECT

Ramues